IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 24, 2007

STATE OF TENNESSEE v. KEVIN HALL

Direct Appeal from the Circuit Court for Bledsoe County
No. 45-2003 Thomas W. Graham, Judge

No. E2006-01915-CCA-R3-CD - Filed October 5, 2007

The defendant, Kevin Hall, presents for review a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2). The defendant pled guilty to driving under the influence (DUI) and the unlawful possession of a weapon while under the influence of alcohol in exchange for concurrent sentences of eleven months, twenty-nine days. As a condition of his guilty plea, the defendant properly reserved a certified question of law as to whether he was subjected to an unconstitutional traffic stop. Following our review of the record and the parties' briefs, we conclude that the defendant was lawfully stopped. Accordingly, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Caroline E. Knight (on appeal), Pikeville, Tennessee, and Howard L. Upchurch (at trial), Pikeville, Tennessee, for the appellant, Kevin Hall.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; J. Michael Taylor, District Attorney General; and J. William Pope, III, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

BACKGROUND

After being indicted for various criminal offenses including DUI and unlawful possession of a weapon while under the influence of alcohol, the defendant filed a motion to suppress all the evidence against him, challenging the validity of the investigatory stop that led to his arrest. At the suppression hearing, Officer Chris Rice of the Pikeville Police Department testified that on April 20, 2003, around 7:00 p.m., he was on patrol when he was stopped by an individual on Spring Street. The individual reported that two "colored or black people" in a "blue van . . . had pulled up and

asked him for directions and that the two people inside were intoxicated." The individual pointed in the direction the van had gone.

Officer Rice testified, that shortly after receiving the individual's tip, he observed a blue van moving from the vacant parking lot of Robinson's Manufacturing, a "closed down clothing plant," to Manufacturer's Road, a public road in Pikeville. Officer Rice pulled up behind the van and activated his blue lights. Officer Rice explained that he activated his blue lights "[b]ecause the tag was upon the ladder rack [and] it was hard to see it" and the van "fit [the] description of the vehicle that the gentleman told me about." Officer Rice described the van as a "Dodge Ram Van, blue about '87 model." The van had a ladder on the back of it and the license plate was tied to the ladder about halfway up. The license plate was not illuminated and "hard to see" without the use of the headlights on his patrol car.

Officer Rice testified that after he pulled the van over, he observed the defendant in the driver's seat. As he approached the van, he observed that the defendant was alone. However, he smelled a "strong odor of intoxicants upon [the defendant's] person." According to Officer Rice, the defendant got belligerent, admitted to drinking beer, and "refused to do anything or cooperate at any time." The defendant refused to submit to a sobriety test or blood alcohol test. Officer Rice also recalled that when the defendant was placed under arrest, he "cussed continually" at him. The defendant admitted that he did not have a valid driver's license as it had been suspended in Massachusetts.

Officer Rice testified that he found some beer and a loaded handgun in the van. As a result, he charged the defendant with DUI, driving on a suspended license, carrying a weapon with intent to go armed, and possession of a handgun while under the influence. Officer Rice also cited the defendant for violating the implied consent laws and for improper display of license plates.

On cross-examination, Officer Rice acknowledged that the van's license plate was current and valid. He recalled that the license plate was tied halfway up the ladder on the back of the van about three and one-half feet high, and the license plate was tied top to bottom where it could not swing. Officer Rice also acknowledged that no foreign materials or tint were on the license plate and that the van's headlights were on. Officer Rice admitted that he did not observe any erratic driving before activating the blue lights of his patrol car. He also recounted that he activated his blue lights while the van was moving from the vacant parking lot to the public road where it stopped a few yards away in front of a private residence.

Following the hearing, the trial court denied the defendant's motion to suppress. Thereafter, the defendant pled guilty to DUI and the unlawful possession of a weapon while under the influence of alcohol, with the expressed reservation of the following certified question of law:

> Whether the stop of 1987 Dodge Ram [Van] operated by the Defendant, Kevin Hall, by Officer Chris Rice on April 20, 2003, the seizure of the Defendant and the observations or search of the Defendant by Officer Rice, were in violation of

the Constitution of the United States and the State of Tennessee and the laws of this State.

As noted in the final judgment, the parties consented to the reservation of the certified question of law, agreed that it was dispositive of the case, and identified the scope of the question reserved.[1] We agree that the question of law is dispositive and determine that the matter is properly before this court.

ANALYSIS

When a decision on a motion to suppress is challenged, the trial court's findings of fact are presumed correct unless the evidence contained in the record preponderates against them. *See State v. Daniel*, 12 S.W.3d 420, 423 (Tenn. 2000). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Lawrence*, 154 S.W.3d 71, 75 (Tenn. 2005) (quoting *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). However, appellate review of a trial court's conclusions of law and application of law to facts on a motion to suppress evidence is a de novo review. *See State v. Nicholson*, 188 S.W.3d 649, 656 (Tenn. 2006); *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

Both the state and federal constitutions expressly protect individuals from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Tenn. Const. art. I, § 7. These constitutional provisions are designed "to prevent arbitrary and oppressive interference with the privacy and personal security of individuals." *Daniel*, 12 S.W.3d at 424 (quoting *INS v. Delgado*, 466 U.S. 210, 216 (1984)). It is the duty of courts to be mindful of the constitutional protections afforded to the individual citizen and guard against any stealthy encroachments thereon. *Williams v. State*, 506 S.W.2d 193, 199 (Tenn. Crim. App. 1973). As such, "a warrantless seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *Nicholson*, 188 S.W.3d at 656; *see also State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000).

One such exception is a brief investigatory stop by a law enforcement officer if the officer has a reasonable suspicion, based upon specific and articulable facts, that a person has either committed a criminal offense or is about to commit a criminal offense. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Binette*, 33 S.W.3d at 218. This narrow exception has been extended to the investigatory stop of vehicles. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). In evaluating whether a police officer has a reasonable suspicion, supported by specific and articulable facts, a court must consider the totality of the

[1] The procedure for reserving a certified question of law is found in Tennessee Rule of Criminal Procedure 37(b)(2)(A).

circumstances. *Binette*, 33 S.W.3d at 218. Those circumstances may include the personal observations of the police officer, information obtained from other officers and agencies, information obtained from citizens, and the pattern of operation of certain offenders. *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). Additionally, the court must consider any rational inferences and deductions that a trained officer may draw from those circumstances. *Id*. Objective standards apply rather than the subjective beliefs of the officers making the stop. *State v. Norwood*, 938 S.W.2d 23, 25 (Tenn. Crim. App. 1996).

In this appeal, the defendant argues that Officer Rice unlawfully stopped his vehicle without the requisite reasonable suspicion to believe he had committed or was about to commit a crime. In rebuttal, the state relies on *State v. Herman Leo Matthews*, No. M2001-00754-CCA-R3-CD, 2002 WL 31014842 (Tenn. Crim. App., at Nashville, Sept. 10, 2002), to argue that Officer Rice made a valid traffic stop because the van's license plate was not clearly visible as required by Tennessee Code Annotated section 55-4-110(b).[2]

In our view, the controlling question is whether the investigatory stop was justified by an objective legal basis.[3] As previously noted, such a stop "must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417 (1981). Indeed, the reasonableness of the officer's suspicion turns on whether the officer has a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *Id.* at 417-18; *see also Binette*, 33 S.W.3d at 218. The officer's suspicion must be something more than a mere hunch; the officer must have objective support for his belief that the person is involved in criminal activity. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Nonetheless, if an officer observes a violation of a traffic law however insignificant, the officer has an objective basis for stopping the vehicle. *See, e.g.*, *State v. Vineyard*, 958 S.W.3d 730, 734 (Tenn. 1997).

It is our view that the facts of this case are distinguishable from the facts of the case offered by the state in support of its argument. In *State v. Herman Leo Matthews*, a police officer testified that he stopped the 1981 Buick Regal because he was unable to see if the car had a license plate.

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[2] Tennessee Code Annotated § 55-4-110(b) provides:

> Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible. No tinted materials may be placed over a license plate even if the information upon such license plate is not concealed.

[3] The parties do not dispute that the defendant was seized, and we note that "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Article I, section 7 of the Tennessee Constitution." *Binette*, 33 S.W.3d at 218 (citing *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn.1993)).

2002 WL 31014842, at *1. In addition, the police officer testified that the license plate on the Regal was registered to a different vehicle, a Mazda 323. *Id.*[4] On appeal, a panel from this court determined that the stop was reasonable due the driver's failure to make his license plate clearly visible at all times, a violation of Tennessee Code Annotated section 55-44-110(b). *Id.* at *3. However, in the instant case, Officer Rice did not testify that he was unable to see the license plate, but rather, he said "it was hard to see [the license plate.]" Furthermore, Officer Rice acknowledged that the license plate was displayed in conformity with section 55-4-110(b) in that the plate was fastened securely at a lawful height, was not covered by tinted materials, and did not have foreign materials on it.

In our view, Officer Rice's subjective judgment that the license plate was "hard to see" cannot be construed as a "particularized and objective basis" for suspecting that the defendant was in violation of a traffic offense. Given that an officer need only articulate a modicum of suspicion for a traffic stop, certainly something more objective must be articulated to meet the standards required by the Fourth Amendment of the United States Constitution and Article I, section 7 of the Tennessee Constitution. To determine otherwise, is to create ambiguity in the standard, shifting it from the intent of the police as objectively manifested to the motive of the police for making the investigatory stop. *See generally Boyd v. United States*, 116 U.S. 616, 635 (1886) ("illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure."); *Norwood*, 938 S.W.2d at 25 ("The specific and articulable facts must be judged by an objective standard, not the subjective beliefs of the officer making the stop.").

Nonetheless, Officer Rice also testified that an individual stopped him and informed him that two people inside a blue van were intoxicated. The individual then indicated the direction the blue van had gone. Officer Rice drove in that direction and shortly thereafter observed a blue van driving out of a vacant parking lot. We note that "facts forming the basis for an officer's reasonable suspicion need not rest upon the personal knowledge or observation of the officer." *State v. Simpson*, 968 S.W.2d 776, 780 (Tenn. 1998). Rather, information derived from an informant's tip may be sufficient to create a reasonable suspicion to justify a temporary vehicle stop. *See State v. Luke*, 995 S.W.2d 630, 636 (Tenn. Crim. App. 1998). In fact, information provided by a citizen-informant is presumed reliable if the informant has necessarily gained the information through first-hand experience, and their motivation for communicating with the authorities is based on the interest of society or personal safety. *See id.*; *see also State v. Melson*, 638 S.W.2d 342, 354 (Tenn. 1982). In addition, "several of the facts supplied by the informant, such as the location and direction of travel, the time of arrival, and the description of the car" support the credibility of the informant. *Simpson*, 968 S.W.2d at 782. Moreover, "if an informant reports an incident at or near the time of its occurrence, 'a court can often assume that the report is first-hand, and hence reliable.'" *Id.* (quoting *Pulley*, 863 S.W.2d at 32.)

[4] It is not entirely clear from this opinion whether or not the officer stopped the Buick Regal before or after receiving information that the license plate was registered to a different vehicle.

In the instant case, the record reveals that the citizen-informant's tip was based upon his first-hand observations and was motivated by safety concerns presented by an intoxicated driver. The citizen-informant's tip regarding description of the vehicle and direction of vehicle's travel was corroborated shortly thereafter by Officer Rice before he initiated the stop. Based on these facts, we determine that the citizen-informant's tip provided reliable, specific, and articulable facts from which the police officer could form a reasonable suspicion that the defendant was posing a threat to public safety by driving under the influence. *See, e.g.*, *State v. William Larry Littles*, No. W2005-02686-CCA-R3-CD, 2006 WL 2571448 (Tenn. Crim. App., at Jackson, Sept. 7, 2006), *perm. app. denied* (Tenn. Dec. 18, 2006). *State v. David Long*, No. W2003-02522-CCA-R3-CD, 2005 WL 525267 (Tenn. Crim. App., at Jackson, Mar. 4, 2005); *State v. Fred Taylor Smith*, No. W2002-02199-CCA-R3-CD, 2003 WL 22309485, at *3 (Tenn. Crim. App., Jackson, Oct. 8, 2003). Accordingly, the trial court properly denied the defendant's motion to suppress, and the issue is without merit.

CONCLUSION

The judgment of the trial court is affirmed.

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J.C. McLIN, JUDGE